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Dawn

SURFACE TRANSPORTATION BOARD
Washington, DC 20423

cs, Environmental Analysis, and Administration

July 18, 2006

Dawn Whitehead
U.S. Fish and Wildlife Service
10711 Burnet Road, Suite 200
Austin, TX 78758

Re: STB Finance Docket No. 34284, Southwest Gulf Railroad Company
Construction and Operation Exemption - Medina County, TX,
Consultation # 2-15-03-I-0276

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Dear Ms. Whitehead:

The Surface Transportation Board's Section of Environmental Analysis (SEA) issued a Draft Environmental Impact Statement (DEIS) on November 5, 2004, which assessed the potential environmental impacts of Southwest Gulf Railroad Company's (SGR) proposed rail line construction and operation in Medina County, Texas. The DEIS assessed four potential rail alignments (Proposed Route, Alternative 1, Alternative 2, and Alternative 3). In response to comments received on the DEIS, SEA is currently preparing a Supplemental DEIS (SDEIS) to study three additional alternative rail alignments: the Eastern Bypass Route; the MCEAA Medina Dam Alternative; and SGR's Modified Medina Dam Route (collectively, the Eastern Alternatives). Pursuant to Section 7 of the Endangered Species Act, 16 U.S.C. 1536, we are writing to request the U.S. Fish and Wildlife Service's (USFWS) concurrence with our determination that construction and operation of any of the Eastern Alternatives is not likely to adversely affect Federally listed species or designated critical habitat.¹

The proposed rail line would connect a proposed Vulcan Construction Materials, LP (VCM) limestone quarry and the Del Rio subdivision of the Union Pacific Railroad Company, near Dunlay, Texas. By letter dated May 12, 2005, SEA determined that construction and operation of the proposed rail line under any of the alternatives studied in the DEIS is not likely to adversely affect Federally listed species or designated critical habitat (copy enclosed for reference). SEA received concurrence with this determination from your office by letter dated May 19, 2005 (copy enclosed for reference).

¹ We note that this determination is based on our analysis of the Eastern Alternatives to date.

NO ACTION	
Date:	24 July 06
Consultation #:	2-15-03-I-0276
Approved by:	<i>Dawn Whitehead</i>
	for Robert T. Pine, Field Supervisor
	U.S. FISH & WILDLIFE SERVICE, AUSTIN, TEXAS

SEA received a letter from your office, dated April 12, 2006, indicating that the Eastern Alternatives may provide suitable habitat for the following Federally listed species: Golden-cheeked Warbler (*Dendroica chrysoparia*); Black-capped Vireo (*Vireo atricapilla*); Comal Springs Dryopid Beetle (*Stygoparnus comalensis*); Comal Springs Riffle Beetle (*Heterelmis comalensis*); Fountain Darter (*Etheostoma fonticola*); Peck's Cave Amphipod (*Stygobromus pecki*); San Marcos Gambusia (*Gambusia georgei*); San Marcos Salamander (*Eurycea nana*); Texas Blind Salamander (*Typhlomolge rathbuni*); and Texas Wild-rice (*Zizania texana*).

On April 11th, 12th and 20th 2006, SEA conducted pedestrian field surveys of the areas that would be crossed by the three Eastern Alternatives to assess potential impacts to the above-listed species. Findings indicate that habitat to support the Black-capped Vireo is not present within the areas traversed by the Eastern Alternatives, and that marginal habitat for the Golden-cheeked Warbler exists at the terminus of the MCEAA Medina Dam Alternative route, the Eastern Bypass Route and SGR's Modified Medina Dam Route, near the loading track area on the quarry site.

The area identified as marginal habitat for the Golden-cheeked Warbler occurs within VCM's proposed Plant Maintenance Facility and Fuel Storage Area for the quarry.² VCM intensely surveyed this area in 2000, 2001, 2002 and 2003, to determine the presence or absence of threatened and endangered species in the proposed quarry area. These detailed surveys included presence/absence surveys for the Golden-cheeked Warbler by endangered species specialists, and concluded that it is unlikely that activities in the surveyed area would adversely affect Golden-cheeked Warblers or their habitat. These surveys included the proposed rail loading track area in the southern portion of the proposed quarry area as well. The results were submitted to your office. (Enclosed figure shows the area in which detailed surveys were conducted. See also Draft EIS, Volume II, Appendix F.) USFWS informed VCM, by letter dated October 17, 2003 (copy enclosed), that VCM and USFWS would be working together throughout the quarry project to avoid impacts to the Golden-cheeked Warbler.

The remaining Federally listed species (Comal Springs Dryopid Beetle, Comal Springs Riffle Beetle, Fountain Darter, Peck's Cave Amphipod, San Marcos Gambusia, San Marcos Salamander, Texas Blind Salamander, and Texas Wild-rice) identified in the April 12, 2006, letter from your office, depend on surficial karst features, and the Edwards Aquifer and its associated springs (specifically the San Marcos River). SEA's April 11th, 12th and 20th 2006, pedestrian field surveys did not disclose observable karst features within the areas that would be crossed by any of the three Eastern Alternatives. Nevertheless, SEA would recommend that a condition be imposed upon any decision granting SGR authority to construct any of the Eastern Alternatives that would require SGR to inventory any caves for endangered species, if SGR identifies a significant karst feature during the grading and construction of the rail line in the area

² Licensing of the quarry is not part of the Surface Transportation Board's mandate, which primarily is the economic regulation of freight railroads. SEA has studied the proposed quarry as part of its cumulative effects analysis for the rail line construction and operation Environmental Impact Statement.

susceptible to karst feature formation (this is the same condition that SEA recommended for the four rail alignments studied in the DEIS). However, in your letter and in a phone conversation with Ms. Rini Ghosh of my staff and Ms. Jill Seed of URS Corporation (URS)³ on June 15, 2006, you indicated concern that the proposed rail line construction and operation could impact karst species by affecting the water quality and water quantity of the Edwards Aquifer.

To address your concern regarding potential impacts to the water quality of the Edwards Aquifer, SEA would recommend mitigation measures requiring SGR to do the following: (1) develop and follow a Stormwater Pollution Prevention Plan; (2) use Best Management Practices during construction and maintenance activities; (3) develop a Spill Prevention, Containment, and Countermeasures Plan specifically for portions of the rail line that would be constructed over the Edwards Aquifer Recharge Zone; (4) develop a Water Pollution Abatement Plan; and (5) monitor the stream beds, land, and water quality in the vicinity of the rail line for indications of diesel or gasoline releases, take appropriate action to prevent diesel or gasoline releases, and remediate any contaminated soils as soon as practicable.⁴ These measures would be applicable to any of the Eastern Alternatives for which the Board may grant a license. Moreover, SEA would also recommend that a condition be imposed that would require SGR to consult with your agency and the Edwards Aquifer Authority during final engineering of the rail line and prior to beginning construction to ensure that the material used for the track, ties, and ballast would not pose hazards to the water quality of the Edwards Aquifer or species dependent upon the aquifer (e.g., use of ties not preserved with creosote).

SGR has indicated that its affiliate, Vulcan Materials Company (Vulcan), owns Edwards Aquifer water rights that could be transferred from existing Vulcan operations in Bexar County and Medina County to supply the needs for the construction, maintenance and operation of the proposed rail line. To ensure that construction and operation of the rail line would not affect water quantity in the Edwards Aquifer, SEA would recommend that a condition be imposed upon any decision granting SGR authority to construct the rail line (under any alternative route) that would require SGR to use Vulcan's existing Edwards Aquifer water rights when using water from the Edwards Aquifer during construction, maintenance and operation of the rail line. Thus, SEA believes that construction and operation of any of the Eastern Alternatives would not cause significant impacts to the above-listed species, or to the Edwards Aquifer and its associated springs.

Based on SEA's field surveys of the Eastern Alternatives, and VCM's detailed surveys of the Plant Maintenance Facility and Fuel Storage Area, as well as indication that VCM would continue to consult with USFWS regarding impacts to Federally listed species on the quarry site,

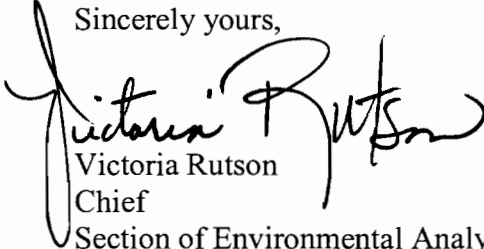
³ URS Corporation (URS) is SEA's independent third-party contractor in this case. See 49 CFR 1105.4(j); Policy Statement on Use of Third-Party Contracting in Preparation of Environmental Documentation, 66 Fed. Reg. 16,975 (2001); and 40 CFR 1506.5(c).

⁴ These are the same conditions that SEA recommended for the rail alignments studied in the DEIS. SEA may propose additional mitigation measures in the SDEIS and/or Final EIS (which SEA will prepare in response to comments received on the DEIS and SDEIS).

we conclude that construction and operation of any of the Eastern Alternatives would not be likely to adversely affect a listed species or designated critical habitat. Moreover, our proposed mitigation measures for preventing groundwater contamination, and identifying and inventorying karst features and caves during grading and construction of the rail line, as described in this letter, would further protect against potential impacts to Federally listed threatened and endangered species.

We request your agency's concurrence with our determination that the construction and operation of any of the Eastern Alternatives are not likely to adversely affect in order to conclude the informal consultation process of Section 7 of the Endangered Species Act. We also welcome USFWS to provide any suggestions or comments on our proposed mitigation measures and to propose additional recommendations for mitigation.

If you have any questions or require additional information, please do not hesitate to contact me or Rini Ghosh of my staff at (202) 565-1539.

Sincerely yours,

Victoria Rutson
Chief
Section of Environmental Analysis

Enclosures